CORPORATIONS — DIRECTORS AND OTHER OFFICERS — TRUST FUND THEORY. — The directors of the A corporation, without giving notice to creditors, transferred all the corporate assets to the B corporation, which contracted to pay the debts of the A corporation. Later, the plaintiff recovered a judgment against the A corporation and, execution being returned unsatisfied, brought suit against the directors. *Held*, that the directors are liable. *Darcy* v. *Brooklyn & New York Ferry Co.*, 89 N. E. 461 (N. Y.).

Although a statute controlled the principal case, it was not regarded as necessary to the decision. See *Darcy* v. *Brooklyn & New York Ferry Co.*, 127 N. Y. App. D. 167. The result is reached on the American theory that the corporate assets are a trust fund for the benefit of creditors. This doctrine, formerly widely accepted in this country, has been rejected in many jurisdictions and is generally adversely criticized by legal writers. See *Hollins* v. *Brierfield Coal Co.*, 150 U. S. 371; THOMPSON, CORPORATIONS, 2 ed., § 3418. But even where this theory is renounced, creditors are allowed to assert a claim to corporate assets which have been distributed among the shareholders or otherwise conveyed away without value given to the corporation, on the ground that this constitutes a fraudulent conveyance. *Hospes* v. *Northwestern Mfg. Co.*, 48 Minn. 174. And it would seem that directors, who have directly caused such a fraudulent conveyance without making proper provision for creditors, should be held responsible to the parties prejudiced thereby. Nor should the fact that the vendee has contracted to assume the debts protect the directors, as they have no right to force the creditors into a novation.

CORPORATIONS — DUTIES OF DIRECTORS — NEGLECT RESULTING FROM ABSENCE UPON VACATIONS. — The defendants were directors of a trust company whose by-laws required monthly directors' meetings. A meeting was omitted because of the absence of several directors upon vacations. Losses resulted to the trust company which would have been prevented had the directors met and exercised proper supervision over certain loans. *Held*, that the directors are accountable to the trust company for such losses. *Kavanaugh* v. *Commonwealth Trust Co.*, 118 N. Y. Supp. 758 (Sup. Ct.).

The precise amount of care which is required of a director is hard to define. Each case must be considered separately upon its particular circumstances. *Briggs* v. *Spaulding*, 141 U. S. 132, 147. Two lines of cases, however, are clearly distinguishable. The one sets as a test the care which a man ordinarily takes of his own private affairs. *Hun* v. *Cary*, 82 N. Y. 65; *Ackerman* v. *Halsey*, 37 N. J. Eq. 356. The other only holds directors to liability where they have substantially acted in bad faith. *Swentzel* v. *Penn Bank*, 147 Pa. St. 140; *Briggs* v. *Spaulding*, *supra*. The reason suggested for the more lenient view is that men of wealth and reputation will not undertake the gratuitous duties of a director, if they are likely to find themselves subjected unwittingly to enormous liabilities. *Spering's Appeal*, 71 Pa. St. 11, 21. The answer obviously is that the only purpose which can be served by directors who are not conversant with the affairs of the business and who do not devote their attention to supervising the administrative officers, is to deceive the investing public. *Gibbons* v. *Anderson*, 80 Fed. 345, 350. The present decision is likely to have a salutary influence upon directors who are inclined to regard their duties as merely perfunctory.

COVENANTS RUNNING WITH THE LAND — ASSIGNEE OF GRANTEE IN FEE BOUND BY COVENANT TO BUILD AND MAINTAIN. — The plaintiff conveyed land to a railroad in fee, in consideration of the latter's covenant to build and maintain a station on the land conveyed. *Held*, that the grantee of the railroad is liable for a breach of the covenant. *Louisville, H. & St. L. Ry. Co.* v. *Baskett*, 121 S. W. 957 (Ky.). See NOTES, p. 298.

CRIMINAL LAW — JURISDICTION — LOCALITY OF PUBLICATION OF LIBEL. — An alleged criminal libel was printed in the defendants' newspaper at Indianapolis,

and several copies of the paper were sent by mail to subscribers in Washington, D. C. *Held*, that since the act of publication was in Indiana only, the District of Columbia has no jurisdiction over the offense. *United States* v. *Smith*, 173 Fed. 227 (Dist. Ct., Ind.).

The law makes libel a criminal offense because the dissemination of defamatory matter tends to disturb the public peace. See *State* v. *Lehre*, 4 Hall's L. J. (S. C.) 48, 53. Accordingly, it has been held that every publication is a distinct offense. *The King* v. *Carlisle*, 1 Chit. 451. In holding that the act of publishing was not committed where the papers were received, the court in the principal case ignores a long line of decisions. *Rex* v. *Watson*, 1 Campb. 215; *Com.* v. *Blanding*, 3 Pick. (Mass.) 304. See *Trial of the Seven Bishops*, 12 Cobbett's St. Tr. 183, 333. The defendants' own physical act was completed when the papers were mailed, but the machinery thus set in motion continued to act until they were received; and if the analogy of the law of battery and homicide is followed, the crime must be held to have been committed where the act took effect. See *Robbins* v. *State*, 8 Oh. St. 131; *Simpson* v. *State*, 92 Ga. 41. Some cases, however, hold that an indictment can be brought either where the libel is mailed or where it is received, on the ground that a misdemeanor can be tried where any part thereof is committed. See *Rex* v. *Burdett*, 4 B. & Ald. 95, 170. But even this view would be equally fatal to the decision in the principal case.

EQUITY — PRIORITY OF EQUITIES — EFFECT OF ASSIGNMENT OF CHOSE IN ACTION. — By fraud X induced a mortgagee to assign to him the mortgage debt. X then assigned it for value to Y, who was ignorant of the fraud. *Held*, that Y takes subject to the equity of the defrauded mortgagee. *Hubbell, Hall & Randall Co.* v. *Brickman*, 64 N. Y. Misc. 370 (Sup. Ct.).

The established rule in New York is that in the absence of estoppel an assignee takes subject to all equities against his assignor in favor of third parties. See *Central Trust Co.* v. *West India Co.*, 169 N. Y. 314, 324. But this view is opposed to the weight of authority. See AMES, CASES ON TRUSTS, 310. The usual explanation of the majority rule is that a defrauded assignor by giving to his assignee an apparently good authority to collect is estopped to deny it. *Putnam* v. *Clark*, 29 N. J. Eq. 412. It is more satisfactory to rest the rule upon the broad principle that equity will not deprive a *bonâ fide* purchaser of a legal interest. See 1 HARV. L. REV. 7. It is erroneous to assume that an assignee's rights are merely equitable; there are legal interests less than title which equity will respect. Thus when an attempted transfer of real property is not completed, but the defect may be cured without calling upon the transferor to do any act, the rights of a *bonâ fide* transferee are superior to existing equities. *Duff* v. *Randall*, 116 Cal. 226; *Hume* v. *Dixon*, 37 Oh. St. 66. The assignee of a chose in action gets a legal right to perfect his title to the money, unmolested and without calling upon the assignor for aid. This right should prevail over latent equities. *Cf. Dodds* v. *Hills*, 2 H. & M. 424; *Ortigosa* v. *Brown*, 47 L. J. Ch. 168, 172.

EQUITY — SPECIFIC PERFORMANCE — DOCTRINE OF MUTUALITY. — An oral agreement was made to lease for eight years certain mining lots in return for a promise to pay royalties on the ore mined and a covenant to work the mines continuously. The plaintiff was given possession, spent a considerable sum on improvements, and worked the mines for over three years. To a bill for specific performance of the lease the defendant raised the objection of lack of mutuality. *Held*, that the defendant must specifically perform his part of the agreement. *Zelleken* v. *Lynch*, 104 Pac. 653 (Kan.). See NOTES, p. 294.

EVIDENCE — TESTIMONY GIVEN AT FORMER TRIAL — ABSENCE OF WITNESS FROM JURISDICTION IN CRIMINAL CASE. — On an appeal by the prisoner after his conviction in the police court, the prosecution offered to introduce evidence of testimony which had been given in the former trial by a witness who had sub-